legal rights because he has delayed in availing himself of them. The existence of statutes of limitation, though it seems to minimize the necessity for such interference, is by no means conclusive against it. Equity's independence of limitation periods where laches occur leaves still to be determined whether there is anything underlying the doctrine of laches which will justify assertive action by the court.

The general view that some detriment following the delay is necessary to call the rule of laches into play, may seem to point to an affirmative jurisdiction analogous to that arising in cases of fraud. But such an analogy finds little support in the cases. Laches has been employed in the past not as a basis of granting affirmative relief, but as a reason for refusing it. See *Wilson* v. *Wilson* (1902) 41 Ore. 459; 1 Pomeroy, Eq. Rem. § 21, *n.* The courts have refused to apply it against legal rights, *Ormsby* v. *Company* (1874) 56 N. Y. 63; *Brush* v. *Railway Co.* (N. Y. 1890) 26 Abb. N. C. 73, and, when applying it in equity to a case giving rise to a legal cause of action also, have expressly left the party to his remedy at law. *Telegraph Co.* v. *Judkins* (1883) 75 Ala. 428; *Kincaid* v. *Gas Co.* (1890) 124 Ind. 577. In theory, laches is built up not on the active breach of a duty but on the passive failure to pursue a right. In other words, equity declines to grant the remedies with which it is invested for the purpose of doing justice, to a party whose neglect has made possible such a situation as to render it doubtful that justice will really be done. *Harrison* v. *Gibson* (1873) 23 Gratt. 212. But unless such party's neglect can be looked upon as a breach of duty, not merely making possible but *causing* or inducing the detrimental position of the other party, laches must be held to lack the elements which justify affirmative relief in the case of fraud. It is believed that equity has not reached the point of holding a failure to sue to be a breach of duty. Nor can such failure be looked upon as causing or inducing such occurrences as the death of the other party's witnesses or the accidental loss of his evidence. Yet either of these is a sufficiently detrimental change in the situation to justify an application of the doctrine of laches. *Foster* v. *Mansfield* (1892) 146 U. S. 88,100; *Whitney* v. *Fox* (1896) 166 U. S. 637. The granting of affirmative relief on the sole ground of laches must, therefore, be considered as based upon an unjustifiable assumption of jurisdiction.

ENFORCEMENT OF FOREIGN DECREES OF ALIMONY.—An action at law lies to recover installments of alimony on a sister state decree, which are due at the time of the institution of the suit, *Bullock* v. *Bullock* (1895) 57 N. J. L. 508; *Dow* v. *Blake* (1893) 148 Ill. 76; *Moore* v. *Moore* (N. Y. 1903) 40 Misc. 162, and a bill will not be entertained in equity, *Bennett* v. *Bennett* (1901) 63 N. J. Eq. 306; *Wood* v. *Wood* (N. Y. 1894) 7 Misc. 579, except where there is no adequate remedy at law, as where husband and wife may not sue each other at law. *VanOrden* v. *VanOrden* (1899) 58 N. J. Eq. 545. The case of *Barber* v. *Barber* (1858) 21 How. 582, affirming the decree of the lower court in the District of Wisconsin, allowing recovery on a bill to enforce a decree for alimony rendered in a New York court, is sustainable on the last point, but to the extent to which it held that equity will take jurisdiction to enforce a foreign decree

for a mere monetary demand, it is not sustainable, though not overruled. An action at law will, of course, lie in such a case in the United States courts. *Knapp* v. *Knapp* (1893) 59 Fed. 641.

The confusion which existed in early decisions resulted from an adherence to the English rule that an action at law will not lie to recover on a domestic decree, on the ground that chancery could adequately enforce it. *Carpenter* v. *Thornton* (1819) 3 Barn. & A. 52; *Hugh* v. *Higgs* (1823) 8 Wheat. 697. The doctrine has been overruled in the case of *Pennington* v. *Gibson* (1853) 16 How. 65, which is widely adopted. Black, Judg. § 962. The earlier decisions were also influenced by the confusion existing as to the nature of a foreign judgment and of a sister state judgment. When the doctrine that a sister state judgment is a debt of record was logically applied, it rapidly became evident that a suit on the debt at law was the proper action. It became evident also hat enforcement by equity is very like execution of the foreign decree, the very thing that the full faith and credit clause does not require. *M'Elmoyle* v. *Cohen* (1839) 13 Pet. 312.

The proposition first laid down is equally true of foreign judgments proper, as well as of sister state judgments. In *Wood* v. *Wood*, supra, an action on a French decree, it was held that the "unpaid installments of alimony" were recoverable. See also, *Swaisie* v. *Swaisie* (1899) 31 Ont. R. 324. In either case it is immaterial that the court rendering the decree may have the power to modify it, for until it is modified it is final as to the sums due thereon. *Nunn* v. *Nunn* (1880) 8 L. R. Ir. 298; *Trowbridge* v. *Spinning* (1900) 23 Wash. 48; *Wagner* v. *Wagner* (1904) 26 R. I. 27, semble. But in no case can recovery be had for installments not due at the institution of the action, nor can a foreign decree as to future alimony be converted into a domestic decree. *Lynde* v. *Lynde* (1900) 162 N. Y. 405, affirmed (1900) 181 U. S. 182.

In a recent suit in equity in New Jersey a result equivalent to converting the foreign decree into a domestic one was reached under a statute permitting an allowance for alimony in case of abandonment. It was held that the forced separation under a divorce from bed and board rendered in New York was "abandonment" within the statute and the allowance was fixed at the same rate granted in the New York decree. The court rightly declined to decree payment of the installments past due, without prejudice, of course, to the petitioner's rights at law. *Freund* v. *Freund* (1906) 63 Atl. 756.

Emery, V. C. was of opinion, however, that the case of *Lynde* v. *Lynde*, supra, holds that such installments, when the original decree is subject to modification, are not final judgments within the full faith and credit clause, and supposed that after that decision recovery of such installments on a sister state decree could be had by comity only. It is submitted that that question was not before the Supreme Court in *Lynde* v. *Lynde*. That case came up on writ of error by the husband, and though the Appellate Division of New York had eliminated installments then due from the judgment, and allowed recovery only on the sum declared presently due by the New Jersey court at the time of the original decree, yet this error was not appealed from by the wife—though it appears from the history of the case given in *Lynde* v. *Lynde*

(1902) 64 N. J. Eq. 736, that the husband probably compromised the matter. The case of *Moore* v. *Moore*, supra, shows clearly that Vice Chancellor Emery's view of *Lynde* v. *Lynde* is not that held in New York.

INSULT A JUSTIFICATION FOR ASSAULT IN LOUISIANA.—Early systems of law at a time when the criminal element played a very large part, principally because of the unruly character of the peoples for whom they were framed, Maine's Ancient Law 356, frowned upon anything tending to a breach of the peace, and the earliest victory of the law was gained when relatives of a man slain were compelled to make a request for blood money before resorting to violence. Perry, Com. Law. Pl. 64. So, when civil actions for personal injuries were differentiated from purely criminal actions, persons were for the same reasons encouraged to seek legal redress wherever personal vengeance would tend to a breach of peace, for the king "will that every one should have recourse to judgment rather than to force." Britton, i. 115-6. Extreme examples of this tendency to substitute courts of law for private retaliation appear in the occasional instances that may be found of redress for insults. Ayliff's New Pandect 595, citing Digest XLVII, 10; Bell's Principles of Law of Scotland 2043 (o); 27 Ass. 134, pl. 11; 17 Ed. IV, 3, pl. 2; 36 Hen. VI 20b, pl. 8. States went so far in requiring men with grievances to seek legal redress that even in Bracton's time he who had slain another in self defense needed the royal pardon. 2 Pol. & Mait., Hist. Eng. Law, 477. It was impossible to deny all right of self help, but the rules regulating the right, as seen by a study of the law of assault and battery, were technical and slow in developing. Compare 2 Pol. & Mait. 476-482, with *Dean* v. *Taylor* (1855) 11 Ex. 68. It was the tendency of men of early times to take the impulses of the injured person as the proper measure of the vengeance he was entitled to exact; and imitate literally the probable rise and fall of his passions in fixing punishment. Maine's Ancient Law 368. Therefore, it seems that we should be justified in assuming that in the early history of torts, when the laws of assault and battery were little developed, and when an insult was still an actionable wrong, an insult alone would justify an assault with force, or at least prevent a recovery for the damages inflicted.

It is surprising, however, to find a court holding such to be the law at the present day. In Louisiana it has just been decided that one who, in the course of an argument about wages, calls his employer a robber, and is knocked down in consequence, cannot recover for the injuries inflicted upon him. *Massett* v. *Keff* (1906) 41 So. 330. This case is the last of a series of four, all applying the same doctrine. The first one was a case where the plaintiff while drunk tried to shoot the defendant, who thereupon shot the plaintiff but not in self defense. It was there laid down by the court, citing no authorities, that "the jurisprudence of this state is well settled that one who is himself in fault cannot recover damages for a wrong resulting from such fault, although the party inflicting the injury was not justified under the laws." *Vernon* v. *Bankston* (1876) 28 La. Ann. 710. No authority for such a proposition can be found in either the common or the civil law. There is nothing suggestive of the